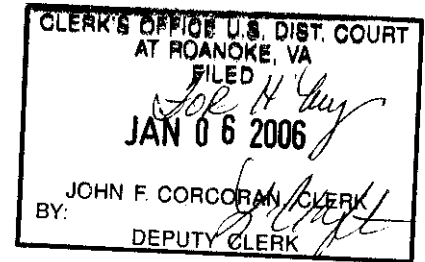


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION



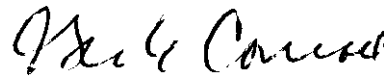
UNITED STATES OF AMERICA,)
)
) Criminal Action No. 5:04CR00025
)
) **MEMORANDUM OPINION**
)
 v.)
)
 CHANCE DANIEL WHITTINGTON,)
) By: Hon. Glen E. Conrad
) United States District Judge
)
 Defendant.)

On May 18, 2005, the defendant pled guilty to an information that charged him with conspiracy to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). The court referred the case to the United States Magistrate Judge for a hearing under Rule 11 of the Federal Rules of Criminal Procedure. The Magistrate Judge conducted the hearing and submitted a report to the court in which he recommended that the guilty plea be accepted. During the Rule 11 hearing, the Magistrate Judge asked the defendant whether he objected to the "Summary of the United States' Evidence" and the defendant stated that he had no objection.

At the time of the Rule 11 hearing, there was no agreement as to all the specific factual assertions in the summary. The defendant agreed only that there was sufficient evidence to support a finding of guilt. The defendant subsequently objected to the report and recommendation of the Magistrate Judge on the grounds that the defendant had not agreed to all the specific factual assertions in the summary. The defendant is correct that his lack of objection to the summary does not constitute agreement regarding all the factual assertions in it. His agreement was strictly that there was sufficient evidence alleged to support of finding of guilt. Therefore, the defendant's objection to the Report and Recommendations will be sustained.

The plea agreement manifests the clear intent that the subsidiary factual issues be committed to the court for consideration at sentencing under a preponderance of the evidence standard. Thus, the defendant's guilty plea shall be accepted, recognizing, however, that the defendant has only accepted responsibility for conspiracy with the intent to distribute 50 grams or more of cocaine base. Findings necessary to apply the Advisory Sentencing Guidelines will be made at the time of sentencing.

DATED this 6th day of January, 2006.

A handwritten signature in cursive script, appearing to read "Mark E. Conrad", is written above a horizontal line.

United States District Judge